LEGAL NOTICE NO. 50

THE ENERGY ACT

(No. 12 of 2006)

IN EXERCISE of the powers conferred by section 104 (2) (*a*) of the Energy Act, 2006, the Cabinet Secretary for Energy and Petroleum make the following Regulations—

THE ENERGY (APPLIANCES' ENERGY PERFORMANCE AND LABELLING) (AMENDMENT) REGULATIONS, 2018

1. These Rules may be cited as the Energy (Appliances' Energy Performance and Labelling) (Amendment) Regulations, 2018. Citation

2. The Energy (Appliances' Energy Performance and Labelling) (Amendment) Regulations, 2016 is amended by deleting the Second Schedule and substituting therefore the following new Schedule— L.N. 125/2016

SECOND SCHEDULE (r.5(2), (3) (c) and 16 (1) (b).)

Registration Charges and Application Fees.

Appliance	*Category*	*Application Fees per model (KShs).*
Self-Ballasted Lamps	CFL.	3000
Double Capped Fluorescent Lamps	FL.	3000
Ballasts for Fluorescent Lamps	BFL.	3000
Refrigerating Appliances	R.	5,000
Non-Ducted Air Conditioners	AC.	10,000
Three-Phase Cage Induction Motors.	M.	10,000

Dated the 7th February, 2018.

CHARLES KETER,
Cabinet Secretary,
Ministry of Energy and Petroleum.

LEGAL NOTICE NO. 51

THE SACCO SOCIETIES ACT

(No. 14 of 2008)

IN EXERCISE of the powers conferred by section 15 of the Sacco Societies Act, the Sacco Societies Regulatory Authority makes the following Order —

THE SACCO SOCIETIES DEPOSIT LEVY (AMENDMENT) ORDER, 2018

1. This Order may be cited as the Sacco Societies Deposit Levy (Amendment) Order, 2018. Citation

2. The Sacco Societies Deposit Levy Order 2011, hereinafter referred to as "the principal Order", is amended by deleting paragraph 2 (1) and substituting therefor the following new paragraph— Sub-leg

2 (1) Subject to a maximum levy of ten million shillings per annum, a deposit-taking Sacco Society shall pay an annual levy (hereinafter called the deposit levy payable) at the rate set out in the schedule based on the total deposits held by the society as indicated in the last audited financial statements of the society

3 The principal Order is amended by deleting paragraph 4

SCHEDULE (p. 2 (1))

Rate of deposit levy payable in percentage	*Period of imposition of deposit levy payable*
0 125%	From January, 2018 to December, 2018
0 15%	From January, 2019 to December, 2021
0 175%	From January 2022

Dated the 7th February, 2018

By order of the Board

JOHN MWAKA,
Chief Executive Officer,
Sacco Societies Regulatory Authority

LEGAL NOTICE NO 52

THE COMPETITION ACT

(No 12 of 2010)

EXCLUSION

THE PROPOSED ACQUISITION OF THE ENTIRE ISSUED SHARE CAPITAL OF EKE PROPERTY LIMITED BY GATMA HOLDINGS LIMITED

IN EXERCISE of the powers conferred by section 42 (1) of the Competition Act, 2010, the Competition Authority of Kenya excludes the proposed acquisition of the entire issued share capital of EKE Property Limited by Gatma Holdings Limited from the provisions of Part IV of the Act due to the following reasons—

(a) the transaction will not affect competition negatively,

(b) the acquirer's turnover for the preceeding year 2016 was KSh 19,896,384, whereas the target's turnover was KSh 134,520,457, therefore the combined turnover of the undertakings is and KSh 154, 417, 281, and

(c) the transaction meets the threshold required for mandatory notification as contained in the Merger Threshold Guidelines

Dated the 23rd January, 2018

WANG'OMBE KARIUKI,
Director-General

SACCO SOCIETIES DEPOSIT LEVY ORDER, 2011

[L.N. 188/2011.]

1. This Order may be cited as the Sacco Societies Deposit Levy Order, 2011 and shall come into operation on the 31st December, 2011.

2. (1) There shall be paid a levy (hereinafter called the deposit levy payable) based on the deposits held in any deposit-taking Sacco Societies at the rate of Zero point one zero per centum (0.10%) of the total deposits held as indicated in the last audited accounts, subject to a maximum deposit levy of Kenya Shillings five million (KSh. 5,000,000) only.

   (2) Upon issuance of a deposit-taking licence, the Authority shall assess the Sacco Society for purposes of this Order.

   (3) The deposit levy payable shall become due and payable not later than thirty (30) days after assessment of the same by the Authority, and service of an assessment notice on the Sacco Society.

3. The deposit levy payable by Sacco Societies on the year of first issuance of a deposit-taking licence shall be the equivalent of the pro-rated amount of the deposit levy payable with effect from the next month after the issuance of the licence.

4. The deposit levy payable by Sacco Societies for the financial year ending December 2012 upon the renewal of the deposit-taking licence, shall be the prescribed deposit levy payable, as provided under paragraph 2, less the pro-rated amount paid by the Sacco Society in the previous year.

5. The Sacco Societies Deposit Levy Order, No. 208 of 2010 is revoked.

By Order of the Board.

EXPLANATORY MEMORANDUM

EXPLANATORY MEMORANDUM TO THE SACCO SOCIETIES DEPOSIT LEVY (AMENDMENT) ORDER, 2018

PART I

Name of the Statutory Instrument: The Sacco Societies Deposit Levy (Amendment) Order, 2018

Name of the Parent Act: The Sacco Societies Act (Cap 490)

Enacted Pursuant to: Section 15 of the Sacco Societies Act (Cap 490)

Name of the Ministry/ Department: Ministry of Industry, Trade and Cooperatives

Gazetted on **23rd February, 2018**

Tabled on .... February, 2018

PART II

1. Purpose of the Statutory Instrument

To increase Sacco Societies Deposit levy rate from the current 0.1 per cent to 0.125 per cent in the first year, second year 0.15 per cent and to 0.175 per cent in the fifth and subsequent years. The deposit levy is a major source of revenue for the effective exercise of the Authority's supervisory and regulatory mandate under the Act. The proposed increase in the rates will ensure financial sustainability for the Authority to effectively and efficiently carry out its mandate. ***Details of L.N. 51/2018 provided in Folio 2.***

2. Legislative Context

The Policy of the Government through National Treasury on funding SAGA; (Semi-Autonomous Government Agencies) for initial three financial years of its commencement of operations. From the fourth year onwards, it is expected that the industry being served or regulated should fully fund the operations through levies and fees provided in the law. The Authority is in its eighth year of operations with the current levy at 0.1 per cent charged vide the Sacco Societies Deposit levy Order (L.N. 188/2011) which only accounts for sixty (51) per cent of the Budget, with the deficit being from the exchequer. However, the funds from the exchequer have been fluctuating greatly affecting the operations of the Authority. It is the L.N.188/2011 that the Authority seeks to amend. ***Details of L.N. 188/2011 provided in Folio 3.***

3. Policy Background

The SACCO subsector contributes significantly to the overall attainment of Vision 2030 through financial inclusion, increased savings mobilization, improved access to credit and enhanced financial sector stability which are the key objectives of the Sacco Societies Act.

The number of licensed SACCOS increased from initial figure of ninety eight (98) in 2011 to a total of one hundred and seventy six (176) DTSs in 2016 stretching available resources to the limit. The increased number of SACCOS coupled with opening of common bonds, expansion through branches and other service delivery channels, increased use of technology, diversified products and near-banking services present new challenges to the Authority.

The challenges include expanded risk exposure to deposit taking business and need to enhance regulatory capacity as well as industry capacity to keep up with the changing operating environment. There is dire need for new innovative ways of supervising the SACCOS including automation of risk analysis; feedback to boards and management; increased visibility of the Authority; more stakeholder engagement and continuously researching on regulatory and developmental policies for the good of the industry.

The foregoing reflects an industry that is transitioning to maturity or independent stage just like other financial sector industries underscoring the need to have a sustainable funding for the regulator to effectively supervise and develop the deposit taking SACCOS in partnership with industry stakeholders. The uncertainty on exchequer funding due to changing policy priorities undermines the execution of

Authority's mandate and hence policy objectives of having a competitive and stable Sacco subsector.

The foregoing has led to immense pressure on the resources available to the Authority hence the need to review the levy upwards before the Government funding is totally withdrawn. The following section provides specific justification for the proposed levy increase.

The growth of Saccos highlighted above has made it imperative for the Authority to review its regulatory and development strategies in order to enhance the financial soundness and competitiveness of the deposit taking Saccos. The specific strategic themes that the Authority will focus on with the increased funding include but not limited to:

a) **Policy Development and Implementation**

Kenya's financial sector has a reputation for innovation and stiff competition. The increasing convergence of market segments served by deposit taking Saccos and other deposit takers including mobile financial service providers demand new thinking for the Sacco business model to remain relevant and competitive. Developing requisite capacity in continuous research and policy formulation in both regulatory and development spheres of the Sacco subsector is a priority for the Authority. The following are a sample of the ongoing policy initiatives that have taken time due to resource constraints.

i) **Central Liquidity Facility:** When successfully actualized will be a transformative initiative both for the financial stability and competitive of the Saccos as deposit takers.

ii) **Policy on Shared Services for Saccos:** Operational sustainability is a major competitive advantage in deposit taking institutions moving forward. Saccos being cooperative can benefit from shared business infrastructure.

iii) **Deposit Guarantee Fund:** Prudential regulation alone is inadequate to deal with failure of deposit taking Saccos. Deposit insurance is an important policy tool as Saccos increasingly offer near-banking services. A Kenyan in a Sacco expects the same protection for deposits as he/she gets from a bank.

iv) **Consolidation/Mergers of Saccos:** Besides shared services policy framework, it is time that the Sacco subsector objectively considered the business pros and cons of a merging Saccos to enhance operating efficiency through economies of scale and scope.

v) **Sacco Industry Performance Portal**: There is increased interest in the Kenya Sacco subsector performance from different stakeholders including universities, Government departments and agencies, policy analysts and development partners. The Authority receives numerous data requests from university students. This is a positive development and one we should fully support by creating a reservoir of Sacco performance data including membership, credit, deposits and overall performance. This requires resources to collect data and analyze in a presentable format.

The Authority plans to develop research capacity to provide leadership in innovative policy initiatives aimed at enhancing sectoral stability, efficiency and financial inclusion.

b) Enhancing Offsite Analysis Capabilities

The Deposit taking Saccos are currently able to electronically submit regulatory returns for analysis; however feedback takes time delaying corrective action that the Sacco Board and Management would otherwise be expected to take. It is for this reason that the Authority seeks to get additional funding by increasing Sacco levy to acquire and maintain a risk based supervision system capable of not only receiving data and analysis but also include a module where the Saccos can instantly download their prudential compliance summary report. The system will automatically conduct validation and consistency checks and give instance feedback report on monthly returns. Automation of offsite analysis will release supervision personnel for onsite inspections, which has increased with a total of 176 licensed Saccos.

In addition, the Authority will be able to hold more prudential meetings with Sacco management and/or directors to discuss regulatory concerns and give appropriate guidance. This will enhance the capacity of the Board to effectively oversee and direct the Sacco business

c) Frequency and Depth of Onsite Inspections

Unlike other financial sector providers whose head office are based in the capital city, Nairobi, the Sacco societies on the other hand are based where their members are hence geographically spread in about forty four counties. Conducting onsite inspections therefore costs more due to travel and accommodation requirements which the current resource envelope is inadequate to cover.

The Authority's future policy with increased funding is to have every licensed Sacco inspected once every two years. In addition, the length of an onsite will be increased as appropriate to provide more time to deeper understand and evaluate the Sacco business strategies and operations. Regular on -site inspections combined with improved offsite analysis will ensure early detection of financial problems for timely corrective action.

The foregoing is critical in entrenching a proactive risk based supervisory approach that focuses on early detection of prudential non-compliance and strengthening the Sacco's capacity to address the business challenges. Implementation of the above plan will avert closure and revocation of licenses for deposit taking that is largely attributed to inadequate institutional capacity and to take timely action on identified Sacco. ***Details of policy brief on Sacco Societies Deposit levy provided in Folio 4.***

4. Consultation Outcome

The Ministry and the Sacco Societies Regulatory Authority held consultations with the stakeholders which included but not limited to the SACCO leaders, officers of the Sacco and National Cooperative Organizations.

The stakeholder engagement process was commenced by creation of awareness to the Sacco leaders and County government officers on the need to increase the Sacco Societies Deposit Levy with the objective of the regulator attaining financial sustainability to be able to effectively and efficiently execute its mandate and ensure safety of Sacco member's funds.

(a) The Authority in the first phase, engaged Stakeholders at the regional level in March, 2016. This involved creation of awareness to the target audience which included regional leaders and county government officials. ***Folio 5 sets out documents relating to this phase of consultation which include:***

i) Invitation letters
ii) Policy Brief discussed at the forums
iii) Presentation by the Authority
iv) Programmes and attendance lists for the meetings

(b) In the second phase, the Authority engaged Stakeholders in the month of November, 2016, this included invitation of comments from stakeholders on the proposed increase, analysis of comments and providing responses on the same. A total of 47 submissions were received out of which 65 per cent were in support of the increase while 37 per cent were against the increase. ***Folio 6 sets out documents relating to this phase of consultation which include***:

i) Invitation Letters
ii) Policy Brief on the Levy Increase
iii) Comments received for stakeholders
iv) Analysis on the comments
v) Responses by the Authority to the stakeholder comments

(c) In the third phase, the comments from the stakeholders were further considered at the Stakeholder validation workshop held on 24th November, 2016 at 680 Hotel in Nairobi and attended by all stakeholders to further discuss the proposals, comments received and reach an agreement. ***Folio 7 sets out documents relating to this phase of consultation which include***:

i) Invitation letters for the stakeholders workshop
ii) Presentations by the Authority
iii) Responses to stakeholders comments
iv) Report on final stakeholder meeting
v) Programme and attendance list for the meeting

The stakeholders after due consideration of the proposed increase unanimously agreed to increase Sacco Societies Deposit levy rate from the current 0.1 per cent to 0.12 per cent in the first year, second year 0.15 per cent and to 0.175 per cent in the fifth and subsequent years. The maximum levy rate payable capped at Kenya shillings ten million (Kshs. 10,000,000).

5. Guidance

5.1The Sacco Societies Regulatory Authority has been in engagement with Sacco leaders and members on the need for the increase of the levy to facilitate effective and efficient prudential regulation to safeguard members' funds. This will continue through education forums on tangible benefits aligned to the economic pillar under Vision 2030. The SACCO subsector through prudential practices enforced by the Authority shall contribute significantly to the overall attainment of Vision 2030 through financial inclusion, increased savings mobilization, improved access to credit and enhanced financial sector stability.

6. Impact

6.1 The amendment shall have no fundamental effect to the rights.

Sacco Deposits are only used as a basis for levy calculation; otherwise the levy is an expense which is expended in the income statement of the Sacco. Thus, the impact of the levy can be measured as a proportion of the turnover. On average, the levy charged has been 0.37% of the consolidated Sacco turnover. With an increase to 0.125% in 2018 the proportion of levy to total turnover shall be 0.5% and 0.56% in 2019 when the levy rate shall be 0.15% before reaching 0.59% of turnover at a levy rate of 0.175% in 2022. There shall be gradual decline in this proportion as the rate stabilizes at 0.175%. This is tabulated below:

		Projected (@15%)				
Amounts (Kshs)	2016	2,017.	2018	2019	2020	2021
Deposits	272,578,602,087	313,465,392,400	360,485,201,260	414,557,981,449	476,741,678,666	548,252,930,466
Total Income	55,257,986,466	63,546,684,436	73,078,687,102	84,040,490,167	96,646,563,692	111,143,548,246
Assesed Levy	204,564,111	317,503,507	406,697,804	499,431,731	547,025,318	595,433,592
Proportion Levy to Total	0.370%	0.500%	0.557%	0.594%	0.566%	0.536%
Levy Rate	0.10%	0.125%	0.150%	0.175%	0.175%	0.175%
Savings from Capping	68,014,491	74,328,233	134,029,997	226,044,737	287,272,619	364,009,037

6.2 The amendment will enhance level of supervision to ensure safe and sound deposit taking SACCOS thereby enhancing financial stability.

7. Monitoring and review

7.1 The success criteria of this regulation will be measured by the increased in revenue for the Authority to undertake effective and efficient supervision.

8. Contact

8.1 John Mwaka, Chief Executive Officer SASRA.
jmwaka@sasra.go.ke
0722 843927

LEGAL NOTICE NO. 48

THE REGISTRATION OF PERSONS ACT

(Cap. 107)

IN EXERCISE of the powers conferred by section 16 of the Registration of Persons Act, the Cabinet Secretary for Interior and Coordination of National Government makes the following rules—

THE REGISTRATION OF PERSONS (AMENDMENT) RULES

1. These Rules may be cited as the Registration of Persons (Amendment) Rules, 2018. Citation

2. The Registration of Persons Rules is amended in rule 8 by deleting the words "shall not pay any fees" appearing in paragraph (6) and substituting therefor the words "shall pay to the authorized officer a fee of one hundred shillings". Sub-leg

Dated the 9th February, 2018.

FRED MATIANG'I,
Cabinet Secretary,
Interior and Co-ordination of National Government.

LEGAL NOTICE NO. 49

THE EXPORT PROCESING ZONES ACT

(Cap. 517)

DECLARATION OF EXPORT PROCESSING ZONE

IN EXERCISE of the powers conferred by section 15 (1) of the Export Processing Zones Act, the Cabinet Secretary for Industry, Trade and Co-operatives declares the parcel of land specified in the Schedule hereto to be an export processing zone.

SCHEDULE

All that piece of land being L.R. No. 5876/2 measuring approximately 20 acres or thereabout, situated in Ndumberi, Kiambu County.

Dated the 5th October, 2017.

ADAN MOHAMED,
Cabinet Secretary,
Industry, Trade and Co-operatives.